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THE CITY OF CRESCENT CITY, KELLY SCHELLONG, DENNIS BURNS, CHARLES  
SLERT, KATHRYN MURRAY, BOB BLACK, and ROD BUTLER

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**EUREKA DIVISION**

DONNA WESTFALL,	)	Case No.: C 10-5222 NJV
	)	
Plaintiff,	)	<b>DEFENDANTS' NOTICE OF MOTION</b>
	)	<b>AND MOTION TO STRIKE SECOND</b>
vs.	)	<b>AMENDED COMPLAINT</b>
	)	
THE CITY OF CRESCENT CITY, a	)	<b>Date: August 30, 2011</b>
Municipal Corporation, KELLY	)	<b>Time: 10:00 a.m.</b>
SCHELLONG, DENNIS BURNS,	)	
CHARLES SLERT, KATHRYN	)	<b>Magistrate Judge Nandor J. Vadas</b>
MURRAY, BOB BLACK, and ROD	)	
BUTLER in their Individual and Official	)	
Capacities, and DOES 1-100.	)	
	)	

Please take notice that on August 30, 2011 at 10:00 a.m. or as soon thereafter as the matter may be heard in the above entitled Court, Defendants THE CITY OF CRESCENT CITY, KELLY SCHELLONG, DENNIS BURNS, CHARLES SLERT, KATHRYN MURRAY, BOB BLACK, and ROD BUTLER will, and hereby do, move for an order striking Plaintiff's state law cause of action and an award of attorney fees pursuant to California's Anti-SLAPP statute, California Code of Civil Procedure § 425.16. The motion will be made upon the grounds that **each of Plaintiff's state law causes of action should be stricken pursuant to California's**

**Anti-SLAPP statute and Defendants should be awarded attorney fees and costs incurred in connection with the motions as to these claims because:**

1. Plaintiff's state law causes of action arise out of Defendants constitutionally protected speech; and

2. Plaintiff cannot demonstrate a likelihood of prevailing on the merits;

a. As to Plaintiff's intentional infliction of emotional distress claim:

i. Plaintiff failed to include facts upon which she bases this claim in her tort claim filed pursuant to Government Code 900 et. al. and is time barred from doing so;

ii. Plaintiff fails to allege facts which establish the Defendants engaged in extreme or outrageous conduct; and

iii. The claim arises out of Defendants' constitutionally protected conduct or conduct privileged under Civil Code § 47(b) and Government Code 821.6;

b. As to Plaintiff's defamation claim:

i. Plaintiff failed to allege defamation or the facts asserted in support thereof in her tort claim filed pursuant to Government Code section 900 et. al. and is time barred from doing so;

ii. The statements upon which Plaintiff bases her claim are non-defamatory as a matter of law; and

iii. The claim arises out of Defendants' constitutionally protected conduct or conduct privileged under Civil Code § 47(b);

3. Defendants are entitled to an award of their attorney fees in an amount to be submitted to the court in a separate motion after a ruling on Defendants' Anti-SLAPP Motion.

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The motion will be based upon this notice, the Memorandum of Points and Authorities filed herewith, the Second Amended Complaint filed by Plaintiff Donna Westfall, the Court's Order granting Defendant's Motion to Dismiss the First Amended Complaint and Granting, in part, Defendant's Special Motion to Strike the First Amended Complaint, as well as such further oral and documentary evidence as may be presented at the hearing hereof.

Dated: July 11, 2011

ANGELO, KILDAY & KILDUFF, LLP

/s/ *Serena M. Sanders*

By: \_\_\_\_\_

CORI R. SARNO

SERENA M. SANDERS

Attorneys for Defendants

THE CITY OF CRESCENT CITY,

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